IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs September 22, 2009

STATE OF TENNESSEE v. JASON WILLIAM SHIPPEY

Direct Appeal from the Criminal Court for Davidson County
No. 2007-B-1426 Cheryl Blackburn, Judge

No. M2008-02387-CCA-R3-CD - Filed March 10, 2010

The Defendant, Jason William Shippey, pled guilty to one count of attempted second degree murder. Pursuant to the plea agreement, the trial court would determine the length and manner of service of the sentence, within a range of eight to eleven years as a Range I, standard offender. After a sentencing hearing, the trial court sentenced the Defendant to ten years to be served in the Tennessee Department of Correction ("TDOC"). On appeal, the Defendant contends the trial court erred when it sentenced him by: (1) improperly enhancing his sentence; and (2) denying him an alternative sentence. After a thorough review of the evidence and the applicable authorities ,we affirm the trial court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR. and D. KELLY THOMAS, JR., JJ., joined.

Emma Rae Tennent (on appeal) and J. Michael Engle (at sentencing hearing), Nashville, Tennessee, for the Appellant, Jason William Shippey.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; Leslie E. Price, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Christopher Buford, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

I. Facts

This case arises from the Defendant's attempt to kill Diane Delatour on February 22, 2007. May 25, 2007, a Davidson County grand jury indicted the Defendant for one count of

attempted first degree murder and theft of property valued more than $1000 but less than $10,000. On August 11, 2008, the Defendant pled guilty to one count of attempted second degree murder, and, as part of the plea agreement, the State dismissed the theft charge. At the hearing where the Defendant entered his plea of guilty, the State informed the trial court that, had the case gone to trial, the evidence would have proven:

> [O]n February 22nd, 2007, here in Nashville, Davidson County, at 817 Nashua Court Officer Mark Lemke (phonetic) and Henry Collins arrived there at the scene where they saw Ms. Diane Delatour being comforted by Ms. Janice Shivey (phonetic). She had wounds to various parts of her body. The victim was able to inform police that Mr. Shippey had left in a Chevrolet Lumina. She was able to crawl and get to the bedroom and inform her children who, in fact, contacted the next door neighbor. The next door neighbor then came to give assistance and also called 911. They arrived on the scene. They transported Ms. Diane Delatour to the hospital.
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> Mr. Shippey went down to the Criminal Justice Center where he came in contact with Sergeant J.C. Stanley. He informed Sergeant Stanley that he thought that the police might be looking for him, and Sergeant Stanley did contact the police. And Detective Kurt Knapp came to be involved in the case. Detective Knapp did take a statement from Mr. Shippey wherein Mr. Shippey admitted his involvement in an altercation involving Diane Delatour. And he also made the statement that he took the actions he took because he believed that Ms. Diane Delatour was reaching for a weapon.

The trial court accepted the Defendant's plea of guilty and noted that the parties had agreed that the Defendant would be sentenced to between eight and eleven years, with the trial court to determine the length and manner of service of the sentence.

At the sentencing hearing, the following evidence was presented: Detective Kurt Jason Knapp, with the Metro Nashville Police Department, domestic violence division, testified that he was the lead detective in this case. He responded to the victim's home on February 22, 2007 at around 1:00 or 2:00 a.m. where he interviewed witnesses, collected evidence, and took photographs. There, he learned that the victim had been stabbed with a knife, and he noted blood at the scene. Detective Knapp recalled that the victim's four sons were present at the scene and that the Defendant was her youngest son's father.

Detective Knapp testified that he went to the warrants division of the police department, where he interviewed the Defendant. The Defendant had voluntarily come to the warrants division and informed officers that there was a warrant for his arrest in another

county and that he believed officers wanted to speak with him about the February 22nd stabbing. The Defendant told the detective that he stabbed the victim because he believed she was about to retrieve a .22 rifle she kept in a case behind boxes in her closet. The detective described the Defendant as calm and cooperative. The detective found this "unsettling," given that the Defendant had stabbed the victim, his girlfriend, seven times. The Defendant told the detective that he had driven himself to the police station in the victim's car. The detective went with the Defendant to the car, and he noticed a woman's purse in the backseat. The detective photographed, but did not search, the car.

Detective Knapp testified that he arrested the Defendant despite the Defendant's insistence that he acted in self-defense because the Defendant outweighed the victim by at least 200 pounds and because the force used by the Defendant was excessive. Further, the Defendant never said that he saw the victim with a gun.

The Defendant described to the detective the circumstances leading to the stabbing, saying that he and the victim were arguing via text messages. The argument continued once the victim got home. The victim went to the back bedroom, which she shared with the Defendant, and shut the door. He pushed the door open and entered the room with the intent of talking with the victim. The detective recalled that this bedroom was where the stabbing occurred and that there was blood on the floor in front of the closet. There was also a trail of blood from that bedroom leading to the children's bedroom.

On cross-examination, Detective Knapp agreed that the Defendant presented himself to the police department before a warrant was issued for his arrest. The detective said that his investigation confirmed that the Defendant's statement that the victim and the Defendant argued via text messages was true. The detective explained that the "sent" messages from the Defendant's phone had been deleted, but he was able to photograph the messages sent from the victim to the Defendant, which had not been deleted from the Defendant's phone.

The victim testified that she suffered lasting effects from this stabbing. She said that she was stabbed in her chest and that when she stood for long periods of time her chest felt like it was caving in, and she could not breathe. The victim said she had permanent nerve damage from her elbow to her hand, and could not lift more than ten pounds with her right hand. She said that she was worried about what the Defendant was going to do when he was released from prison. She was worried about where her children were and who was driving down the street. The victim said the Defendant had expressed no remorse.

The victim offered photographs of her physical scars, noting that some of them were on her chest where the Defendant stabbed her in the lung and slit her liver. The victim said that this attack had negatively affected each of her four sons.

The victim described the events leading to this attack, recalling that she had agreed to allow the Defendant to move into her house for a week or two while he was waiting on his income tax refund. When he received his tax refund, he was to pay her the $900 in child support that he owed to her. While he was staying with her, he would not pay for rent or for food, and she would work while he home schooled their son. The victim said that, after the Defendant received his income tax refund, he was going to obtain employment.

The victim said that, two days before the Defendant stabbed her, he had "grabbed" their son. The victim was listening to the Defendant read to their son and then she heard crying. Her youngest son came into the den looking "ghostly" and said that the Defendant grabbed his shirt "really hard." The victim said she and the Defendant argued. She expressed her concern that the Defendant would act more violently toward their son when she was gone if he treated their son in such a manner while she was present. She told him that he needed to pack his things and move out of her house.

The victim said that she worked until midnight and then drove home after she had told the Defendant he had to leave. When she arrived, the Defendant was sitting in her den watching television. Near him, were five white trash bags filled with his things. The victim testified she said nothing to him and went to her bedroom to ensure that her son's social security card and birth certificate were still in a safe she kept in her closet. She said that the Defendant had stolen their son's social security number before, which was the basis for her concern. She said she did not hear the door to the bedroom open but felt what she thought was a "punch." She then felt a second punch in her stomach and dropped to her left side. She said the Defendant got close to her throat and said either "I will cut you" or "I will kill you." The victim attempted to grab at his hand and the knife, and she saw her finger being cut by the knife. She said it was not until that moment that she realized that the Defendant had been stabbing her. The victim said she did not scream because she knew her sons were sleeping. The Defendant told her that if she contacted police he would come back and "finish [her] off." He then took her purse, cell phone, and keys, and he left.

The victim said she crawled down the hallway to the bedroom shared by her two older sons. She woke her children and the two younger children stayed with her while her two older sons sought help. She did not have a house phone, and the Defendant had taken her cell phone. Her sons were finally able to contact her neighbors and 911. The victim said that the Defendant had punctured her lung and slit her liver. The victim said that she died while being treated at Vanderbilt, but doctors were able to resuscitate her.

The victim said her main goal was to return home to her sons, from whom she had never been apart before this event. She said one of her sons refused to return to her house for several weeks, crying everyday. The victim said the Defendant gave no regard to the fact

that her sons from a previous relationship as well as their own son were present at the house when he stabbed her. She said he did not care at all how they found her after the stabbing.

The victim reminded the court that the Defendant told her that he would kill her if she went to the police. She then asked the trial judge to sentence the Defendant to a term as long as possible so that her sons could finish high school without fearing the Defendant would return. She said she did not want her sons to come home one day and her not be there.

Upon questioning by the trial court, the victim said that there was, in fact, a gun in her closet. She said she had never seen or held the gun, which belonged to her eldest son. She said she had recently learned that the gun did not have a clip.

The Defendant testified that he was born in Jamaica, that he lived in Miami, Florida, where he graduated from high school, and that he had resided for the last fourteen years in Nashville. The Defendant came to Nashville as the manager of a Home Depot, where he worked for two years, before working for more than a year at Lowe's. Thereafter, the Defendant drove his own tractor-trailer, contracting out his services. To supplement his income, the Defendant worked as a disc jockey. The Defendant said he had also worked for the TDOC, had driven a charter bus for Gray Line Charters and Tours, and a had driven a tractor-trailer for the United States Postal Service for five years.

The Defendant said that, shortly before this incident, he had been cited for drag racing. Because such a conviction for drag racing would cause him to lose his commercial trucking license and ultimately his employment, he pled to reckless driving so his license would not be revoked, and he resigned from the post office to avoid any disciplinary action. He admitted, however, that he did not pay his fines, and his license was ultimately suspended and a warrant issued for his arrest. He said that, before he resigned from the post office, his child support was current and being withheld from his paycheck. When he resigned, he fell behind two months on his child support.

The Defendant said that, because he was behind on child support, the victim agreed to allow the Defendant to temporarily reside at her house and home school their son so that she could obtain employment. The Defendant said the victim was three months behind on her mortgage, so he agreed to lend her $900 for her house note if she allowed him to stay there. Further, he wanted to school his son, whom he said the victim could "not handle" and who had not been attending school for three years. The Defendant said the victim did not home school him the way he needed to be taught. The Defendant recalled that, while the agreement worked amicably for a time, ultimately the victim asked him to pack his things and leave via a text message late at night. The Defendant said he packed his things and prepared to leave, but he was unable to contact anyone to pick him up because it was 12:30 a.m.

The Defendant said that, when the victim arrived, they made eye contact, and the victim went back to her bedroom. The Defendant followed the victim back to her bedroom hoping that she would allow him to use her car so he could take his things to storage. When he entered the room, he saw the victim bent over near the gun case. He said he asked her what she was doing, and she "jumped up." He said, "I had a reaction, a knee-jerk reaction basically, and that's when I stabbed her approximately four or five times" with the pocket knife that he carried on his hip.

The Defendant said, after this incident, he was in "shock" and "panicked" and grabbed the victim's purse before he left. He explained he took the purse looking only for her car keys. He left the house and drove to the Criminal Justice Center where he turned himself in to police. The officers there told him that they had no reason to hold him, but he waited there until they could investigate the incident. The Defendant said he then voluntarily gave a statement to police.

The Defendant identified a letter he had written to the trial court while his case was still pending in which he apologized for what he had done to the victim. In the letter, which the Defendant read portions of in court, the Defendant said he took full responsibility for his actions and wanted to apologize to the victim. He apologized, saying, "My actions, even though they were a direct reaction to extreme provocation, I realize was a gross lack of self-control at the time when I was clearly not myself." He then asked for forgiveness and mercy. The Defendant identified multiple people in the courtroom who were present to support him and said he intended to obtain employment if released. He emphasized that he had no prior criminal history and explained that this case was the result of "horrible" judgment.

On cross-examination, the Defendant agreed that this stabbing occurred while he was on probation for his reckless driving case. He said he had violated that probation by missing one payment of his fine. The Defendant conceded that he never saw a gun in the victim's hand before he stabbed her, and he had never before seen the gun she kept in the closet. The Defendant explained that he did not call emergency responders because the victim's son was waking as he was leaving. He said that the situation was "too much for [him] to deal with." The Defendant agreed that he and the victim were both sending hostile text messages and that the argument was two-sided.

Upon questioning by the trial court, the Defendant could not explain why his sent messages on his cell phone had been deleted. He said that, upon arriving at the criminal justice center, he did not request that an ambulance be sent to the victim's home. He said the victim had told him that a gun was kept in the closet in a gun case, but he had never seen the gun. The Defendant said the victim never described the gun to him, and it could have been a shotgun or a BB gun. The Defendant said that, while he knew he had violated his

probation, he did not turn himself in to police because he was waiting until the victim paid him back, so he could post bail.

Joscelyn Shippey, the Defendant's father, testified that he had attended every hearing in the Defendant's case and encouraged the Defendant to plead guilty. Shippey testified that the Defendant was not the man that he was being portrayed to be during the sentencing hearing and that this incident involved a situation that had gotten "wildly" out of control. Shippey said he and the Defendant communicated frequently, both by telephone and by mail. Shippey testified he had seen changes in the Defendant since the Defendant had been incarcerated, including a more spiritual approach to life and a willingness to accept responsibility for this attack. Shippey asked the court to grant the Defendant an alternative sentence and allow him to return to Florida where the Defendant could live with Shippey and his wife. Shippey said he had always had a close relationship with his son but was unaware that the Defendant had become addicted to drugs or that he was living with the victim around the time of this incident.

After noting the proper statutory considerations, the trial court found that four enhancement factors applied: (1) the defendant had a previous history of criminal convictions or criminal behavior in addition to those necessary to establish the appropriate range; (2) the defendant treated the victim with exceptional cruelty during the commission of the offense; (3) the defendant failed to comply with conditions of release into the community; and (4) the defendant was on probation at the time of this offense. T.C.A. § 40-35-114(1), (5), (8), & (13)(C) (2006). The trial court found that two mitigating factors applied, including that the Defendant assisted authorities and that, under the catch-all provision, he did not have a bad criminal record, he had been productive until a certain point in his life, drugs were involved, and he had a very supportive family. The trial court sentenced the Defendant to ten years and denied him an alternative sentence.

II. Analysis

On appeal, the Defendant contends the trial court erred when it sentenced him by: (1) improperly enhancing his sentence; and (2) denying him an alternative sentence.

When a defendant challenges the length, range, or manner of service of a sentence, this Court must conduct a de novo review on the record with a presumption that "the determinations made by the court from which the appeal is taken are correct." T.C.A. § 40-35-401(d) (2006). This presumption, however, is conditioned upon the affirmative showing in the record that the trial court properly sentenced the defendant. *State v. Ashby*, 823 S.W.2d 166, 169 (Tenn. 1991). As the Sentencing Commission Comments to this section note, the burden is on the appealing party to show that the sentencing is improper.

T.C.A. § 40-35-401, Sentencing Comm'n Cmts. If the trial court followed the statutory sentencing procedure, made findings of facts which are adequately supported in the record, and gave due consideration and proper weight to the factors and principles relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result was preferred. T.C.A. § 40-35-103 (2006); *State v. Ross*, 49 S.W.3d 833, 847 (Tenn. 2001). "The presumption does not apply to the legal conclusions reached by the trial court in sentencing the accused or to the determinations made by the trial court which are predicated upon uncontroverted facts." *State v. Dean*, 76 S.W.3d 352, 377 (Tenn. Crim. App. 2001); *State v. Butler*, 900 S.W.2d 305, 311 (Tenn. Crim. App. 1994); *State v. Smith*, 891 S.W.2d 922, 929 (Tenn. Crim. App. 1994). In the event the record fails to demonstrate the required consideration by the trial court, appellate review of the sentence is purely de novo. *Ashby*, 823 S.W.2d at 169.

In conducting a de novo review of a sentence, we must consider: (1) the evidence, if any, received at the trial and the sentencing hearing; (2) the presentence report; (3) the principles of sentencing and arguments as to sentencing alternatives; (4) the nature and characteristics of the criminal conduct involved; (5) evidence and information offered by the parties on the mitigating and enhancement factors set out in Tennessee Code Annotated sections 4-35-113 and -114; (6) any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and (7) any statement the defendant made in the defendant's own behalf about sentencing. *See* T.C.A. § 40-35-210 (2009); *State v. Taylor*, 63 S.W.3d 400, 411 (Tenn. Crim. App. 2001).

A. Length of Sentence

The Defendant contends that the trial court improperly applied one enhancement factor, that the Defendant treated the victim with exceptional cruelty, and improperly failed to apply one mitigating factor, that the Defendant acted under strong provocation. As to the enhancement factor, he asserts that the evidence does not support a finding that he acted with culpability appreciably greater than that inherent in his conviction, a necessary requirement proceeding the application of the exceptional cruelty enhancement factor. As to the mitigating factor, he asserts that the evidence clearly demonstrates that he acted under strong provocation, and he cites the angry text message exchanges and his belief that the victim was retrieving her gun in support of this assertion.

The Criminal Sentencing Act of 1989 and its amendments describe the process for determining the appropriate length of a defendant's sentence. Under the Act, a trial court may impose a sentence within the applicable range as long as the imposed sentence is consistent with the Act's purposes and principles. T.C.A. § 40-35-210(c)(2) and (d) (2006); *see State v. Carter*, 254 S.W.3d 335, 343 (Tenn. 2008). The Tennessee Code allows a

sentencing court to consider enhancement factors when determining whether to enhance a defendant's sentence, including enhancement factor (5), that he treated the victim with exceptional cruelty. T.C.A. § 40-35-114 (5).

If an enhancement factor is not already an essential element of the offense and is appropriate for the offense, then a court may consider the enhancement factor in its length of sentence determination. T.C.A. § 40-35-114 (2006). In order to ensure "fair and consistent sentencing," the trial court must "place on the record" what, if any, enhancement and mitigating factors it considered as well as its "reasons for the sentence." T.C.A. § 40-35-210(e). Before the 2005 amendments to the Sentencing Act, both the State and a defendant could appeal the manner in which a trial court weighed enhancement and mitigating factors it found to apply to the defendant. T.C.A. § 40-35-401(b)(2) (2003). The 2005 amendments deleted as grounds for appeal, however, a claim that the trial court did not properly weigh the enhancement and mitigating factors. *See* 2005 Tenn. Pub. Acts ch. 353, §§ 8, 9. In summary, although this Court cannot review a trial court's weighing of enhancement and mitigating factors, we can review the trial court's application of those enhancement and mitigating factors. T.C.A. § 40-35-401(d) (2006); *Carter*, 254 S.W.3d at 343.

1. Enhancement Factor

In this case, the Defendant is a Range I offender, and attempted second degree murder is a class B felony, with an appropriate sentencing range of eight to twelve years. T.C.A. § 39-12-101(a)(2); T.C.A. §39-13-210(a)(1); and T.C.A. § 40-35-112(a)(2). In accordance with the plea agreement, the trial court was to sentence the Defendant to between eight and eleven years.

The trial court enhanced the Defendant's sentence to ten years, based in part on enhancement factor (5), that the Defendant treated the victim with exceptional cruelty. T.C.A. § 40-35-114(5). In support of this finding, the trial court stated:

> He did treat or allow the victim to be treated with exceptional cruelty during the commission of the offense. Now, this is not an inherent element of attempted murder in the second degree, however, it is limited to the treatment during the commission of the offense and is not then related to the medical complications that might occur. It has to do with it's a very mean spirited overt reaction and those sorts of elements. And I find that does apply in this case. And according to the testimony she goes into a bedroom, shuts the door. She's looking for something that has nothing to do with a weapon. There doesn't seem to be any indication in any of the [text] messages that she says

> I'm going to kill you or anything. He comes in and just starts stabbing her. She's in a fetal position. He does it multiple, multiple times and then leaves allowing her no ability to contact help. So that applies, factor number five does.

As our Supreme Court has explained:

> [P]roper application of enhancement factor (5) requires a finding of cruelty under the statute "over and above" what is required to sustain a conviction for an offense. *See State v. Embry*, 915 S.W.2d 451, 456 (Tenn. Crim. App. 1995); *see also Poole*, 945 S.W.2d at 98 (requiring the facts in a case to "support a finding of 'exceptional cruelty' that demonstrates a culpability distinct from and appreciably greater than that incident to" the crime). In other words, such evidence must "denote[ ] the infliction of pain or suffering for its own sake or from the gratification derived therefrom, and not merely pain or suffering inflicted as the means of accomplishing the crime charged." *State v. Haynes*, No. W1999-01485-CCA-R3-CD, 2000 WL 298744, at *3 (Tenn. Crim. App. filed at Jackson, Mar. 14, 2000).

State v. Arnett, 49 S.W.3d 250, 258-59 (Tenn. 2001). This Court has held that the infliction of multiple wounds is, in some instances, sufficient to support the application of enhancement factor (5). *See, e.g., State v. Darrin Bryant*, No. W2000-01136-CCA-R3-CD, 2001 WL 792616, at *7 (Tenn. Crim. App., at Jackson, July 11, 2001) (finding that the defendant's infliction of "up to" eight stab wounds on the victim, who was asleep at the time of the attack, was sufficient to warrant the application of enhancement factor (5) to the defendant's conviction for attempted first degree murder), *perm. app. denied* (Tenn. Dec. 10, 2001). *Cf. State v. Leslie Bryan Willis*, No. M2001-00634-CCA-R3-CD, 2003 WL 21523250, at *30 (Tenn. Crim. App., at Nashville, June 30, 2003) (concluding that the trial court erred when it applied enhancement factor (5) on the basis of "multiple stab wounds" because this evidence standing alone was not adequate to satisfy this factor), *perm. app. denied* (Tenn. Jan. 26, 2004)

In the case under submission, we conclude that the evidence is adequate to support the trial court's application of enhancement factor (5). The evidence shows that the victim entered her home where her three sons, including the son she shared with the Defendant, were sleeping. Without speaking to the Defendant, with whom she had exchanged angry text messages, she went into her bedroom and shut the door. The Defendant followed her and, never seeing the victim with a gun, began to stab her multiple times. He then took her purse, which contained the keys to her car and the only telephone in the house, and left the house.

The victim, unable to contact emergency services, awakened her sons and asked them to go to a neighbors house to get her medical assistance. The Defendant went directly to the police station where he turned himself in to police but never asked police to send aid to the victim. We agree with the trial court that multiple wounds, in combination with the Defendant's leaving the victim with no transportation and no telephone to summon help, adequately supports this enhancement factor.

2. Mitigating Factor

The Defendant contends that the trial court erred when it failed to apply the mitigating factor that he acted under strong provocation. T.C.A. § 40-35-113(2). We agree with the trial court that this mitigating factor was not supported by the evidence. The only evidence tending to support provocation was the exchange of angry text messages and the Defendant's mistaken belief that the victim was reaching for a gun. As to the text messages, they were in no way threatening and, while containing some profanity, were not a basis for provocation. As to the Defendant's mistaken belief, he testified that he knew that the victim's son kept a gun in a case in the closet. He conceded that he did not know what type of gun was in the closet, and he agreed that it could have been a BB gun. The Defendant said that he never saw the victim with a gun; rather, when he saw her near the closet he had a "knee-jerk" reaction causing him to begin stabbing her. These facts support the trial court's rejection of this mitigating factor.

Because we conclude that the trial court properly applied enhancement factor (5) and properly rejected mitigating factor (2), we affirm the length of the Defendant's sentence. He is not entitled to relief on this issue.

B. Alternative Sentence

The Defendant enjoys no favorable status for alternative sentencing for his Class B felony convictions of attempted second degree murder. T.C.A. § 40-35-102(6) (2006). Having received a sentence of ten years or less, the Defendant is eligible for probation. *See* T.C.A. § 40-35-303(a). A defendant seeking probation bears the burden of "establishing [his] suitability." T.C.A. § 40-35-303(b) (2006). In determining sentences involving confinement, the trial court should consider whether "[c]onfinement is necessary to protect society by restraining a defendant with a long history of criminal conduct," whether "[c]onfinement is necessary to avoid depreciating the seriousness of the offense," whether incarceration provides "an effective deterrence to others likely to commit similar offenses," and whether "[m]easures less restrictive than confinement have frequently or recently been applied unsuccessfully to the defendant." T.C.A. § 40-35-103(1)(A)-(C).

To determine the appropriate combination of sentencing alternatives that shall be imposed on the defendant, the court shall consider the following:

> (1) The evidence, if any, received at the trial and the sentencing hearing;
>
> (2) The presentence report;
>
> (3) The principles of sentencing and arguments as to sentencing alternatives;
>
> (4) The nature and characteristics of the criminal conduct involved;
>
> (5) Evidence and information offered by the parties on the mitigating and enhancement factors set out in §§ 40-35-113 and 40-35-114;
>
> (6) Any statistical information provided by the administrative office of the courts as to sentencing practices for similar offenses in Tennessee; and
>
> (7) Any statement the defendant wishes to make in the defendant's own behalf about sentencing.

T.C.A. § 40-35-210(b). Additionally, "[t]he potential or lack of potential for the rehabilitation or treatment of the defendant should be considered in determining the sentence alternative." T.C.A. § 40-35-103(5).

Our review of the record shows that the trial court carefully considered all relevant factors in sentencing the Defendant, and our review is de novo with a presumption that the trial court's sentence was correct. *See Ashby*, 823 S.W.2d at 169. When denying the Defendant an alternative sentence, the trial court stated:

> So he is not automatically eligible for probation. He's got to convince me that that's what needs to be done. Now, he has served a very extensive period, so split confinement is not also available. I've just got to decide whether the circumstances of this offense – and I have to look at everything.
>
> I think the thing that is very important to me is that this is horrifying, shocking, and reprehensible, not only in the over – I don't want to use the word "overkill" but just the extreme nature of the offenses and also the way he left her and his child without any ability to phone the police, without any ability to get help. He drove the car. And then even when he gets to the police station, he doesn't make any efforts. I think that's horrifying. I think it's

extremely violent. And I think otherwise that I just cannot put him on any alternative sentence.

The trial court is charged to consider the nature and characteristics of the criminal conduct involved when determining the appropriate combination of sentencing alternatives. T.C.A. § 40-35-210(b)(4). Considering these, the trial court found the Defendant had not met his burden of proving that he was a suitable candidate for an alternative sentence. We conclude the evidence does not preponderate otherwise. We agree with the trial court that the nature and circumstances of this offense, specifically that the Defendant stabbed the unarmed mother of his son multiple times while several children were present in the home and then took her car and only telephone rendering her unable to call for assistance, amply support the trial court's decision to deny the Defendant an alternative sentence. The Defendant is not entitled to relief on this issue.

III. Conclusion

In accordance with the foregoing reasoning and authorities, we conclude that the trial court did not err when sentencing the Defendant. We, therefore, affirm the trial court's judgment.

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ROBERT W. WEDEMEYER, JUDGE